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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of the
Telecommunications Act of 1996

Telemessaging, Electronic
Publishing, and Alarm Monitoring
Services

CC Docket No. 96-152

COMMENTS OF JOINT PARTIES

The undersigned Joint Parties,¹ in addition to their individual Comments, submit the following Comments in this proceeding.

Introduction and Summary

The Joint Parties have agreed on certain interpretations and clarifications of the Telecommunications Act of 1996 (the "Act") relating to electronic publishing. Implicit in section 274 of the Act is Congress' recognition that the public interest would be served by joint undertakings involving the Bell Operating companies ("BOCs") and others. These undertakings can take a variety of forms, including gateways, inbound telemarketing, teaming arrangements, and joint ventures.

¹ Bell Atlantic Telephone Companies and Newspaper Association of America. Pacific Telesis Group has informed the Joint Parties that it supports the principles recommended in these Comments. The parties also will file separate comments addressing other provisions of the Notice.

The Joint Parties urge the Commission to consider the care and specificity with which Congress established different types and degrees of safeguards for various activities. While Congress considered section 274 to be largely self-executing and did not envision extensive rulemaking by the Commission to implement it, there are certain areas where the interrelationship of the provisions is complex, particularly in the area of joint marketing. In order that the industry can make business arrangements that will provide the services Congress intended to bring to the public without risking adverse legal consequences, the Joint Parties request the Commission to adopt the five clarifications set forth below.

1. Permissible Activities of a BOC in an Electronic Publishing Joint Venture

The prohibition on a BOC's carrying out promotion, marketing, sales and advertising for or in conjunction with an "affiliate" contained in section 274(c)(1)(B) does not apply to an electronic publishing joint venture. Section 274(c)(2)(C) allows a BOC to "participate" in a joint venture. And section 274(c)(1) makes it clear that such participation constitutes an exception to the restriction in section 274(c)(1)(B). The only limitations on such participation are those spelled out specifically in section 274(c)(2)(C), where no prohibition against carrying out promotion, marketing, sales and advertising for or in conjunction with the joint venture appear. Indeed, section 274(c)(2)(C) specifically provides that a BOC may provide promotion, marketing, sales or advertising personnel and services to a joint venture.

2. Ownership of Electronic Publishing Joint Ventures.

The definition of “own” set forth in section 274(i)(8) applies to the requirement of section 274(i)(5) that an electronic publishing joint venture must be “owned” by a BOC or affiliate. Thus, a minimum 10% equity interest or 10% gross revenue share by a BOC is sufficient to constitute ownership of a joint venture. We note that the definitions of section 274(i) apply only in the context of section 274, and not necessarily to any other provision of the Act.

3. Definition of a Gateway

Section 274(h)(2)(c) exempts from the definition of electronic publishing “the transmission of information as part of a gateway to an information service.” Congress apparently looked beyond the MFJ in crafting this exception.² The French Videotex model for a gateway that was before the district court in 1988 differs from the current Internet model that has become significant in the United States and world-wide. In particular, the French Videotex gateway was provided solely by the monopoly telephone company as the only available access point into the information network. In contrast, the Internet today allows consumers to choose among multiple, competitive access providers to link up with innumerable “home pages” that contain links to other information sites. Congress cannot have intended the term “gateway” to be limited to the technologically obsolete French system, which never gained a significant foothold in the United States. Instead, Congress must have meant to include the present system of Internet access and

² Cf. MFJ §K(1) added by *United States v. Western Electric*, 1988-1 Trade Cases ¶67918 (D.D.C. 1988).

home pages. In the context of the Internet, a "gateway" service would include access to home pages with electronic links to world wide web sites and home pages of other entities. Thus providing the ability for a user to "click" a mouse on the name, logo, or picture of another entity and link directly to that entity's Internet site would not constitute electronic publishing.

Section 274(h)(2)(c) includes "introductory information content" as part of a gateway, and thus not amounting to electronic publishing. In the context of an Internet home page, this introductory information content could include the names and descriptions of other electronic publishers' sites, links to those sites, and categorization of those sites. The site description could be generated by the Internet service provider (which might be a BOC) and would not constitute electronic publishing so long as the introductory information does not "affect the presentation of such electronic publishing services to users." For example, the introductory screen could list the Internet service provider's choices of ten Italian restaurants in a given city and allow the user to link directly to those restaurants' Internet sites to view directions, menus, prices, recipes, and other information of the restaurant's choosing. The restaurants, but not the Internet provider, would be engaging in electronic publishing.

4. Software Browsers

Personal computers require software "browsers," such as Netscape Navigator or Microsoft Internet Explorer, to access information on the Internet. A software browser is a computer program and does not fall within any of the listed types of electronic publishing in section 274(h)(1), nor is it "like or similar

information.” Furthermore, software browsers could be considered to be part of “navigational systems that enable users to access electronic publishing services” under section 274(h)(2)(C) and thus excluded from the definition of electronic publishing.

5. Marketing and Promotion of Gateway Services

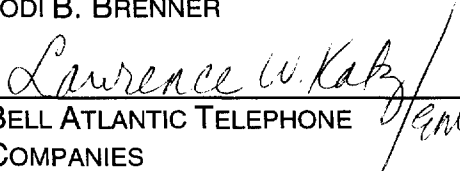
Section 274(h)(2)(C) permits a BOC to provide gateways to information and electronic publishing services, and exempts such activity from the definition of electronic publishing. However, section 274(c)(1)(B) purports to restrict a BOC “from engaging in any promotion, marketing, sales or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.” This subsection does not restrict the promotion, marketing or sale of a gateway feature, because such activities are not related to the “provision of electronic publishing.”

Conclusion

Accordingly, the Joint Parties request the Commission to adopt the clarifications discussed above.

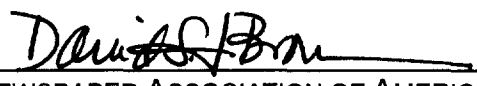
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